

**TOBACCO RETAILER AMENDMENTS**

2020 SIXTH SPECIAL SESSION

STATE OF UTAH

**Chief Sponsor: Evan J. Vickers**

House Sponsor: Jon Hawkins

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**LONG TITLE**

**General Description:**

This bill amends and clarifies provisions relating to tobacco retailers.

**Highlighted Provisions:**

This bill:

- ▶ amends and clarifies the requirements that a retail tobacco specialty business must meet in order to receive an exemption from certain community location distancing provisions; and
- ▶ makes technical and corresponding changes.

**Money Appropriated in this Bill:**

None

**Other Special Clauses:**

This bill provides a special effective date.

This bill provides retrospective operation.

**Utah Code Sections Affected:**

AMENDS:

**10-8-41.6**, as last amended by Laws of Utah 2020, Chapters 302, 347 and last amended by Coordination Clause, Laws of Utah 2020, Chapter 302

**17-50-333**, as last amended by Laws of Utah 2020, Chapters 302, 347 and last amended by Coordination Clause, Laws of Utah 2020, Chapter 302

**26-62-202**, as last amended by Laws of Utah 2020, Chapter 347



28 [63I-1-210](#), as last amended by Laws of Utah 2020, Chapter 302

29 [63I-1-217](#), as last amended by Laws of Utah 2020, Chapters 154 and 302

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31 *Be it enacted by the Legislature of the state of Utah:*

32 Section 1. Section **10-8-41.6** is amended to read:

33 **10-8-41.6. Regulation of retail tobacco specialty business.**

34 (1) As used in this section:

35 (a) "Community location" means:

36 (i) a public or private kindergarten, elementary, middle, junior high, or high school;

37 (ii) a licensed child-care facility or preschool;

38 (iii) a trade or technical school;

39 (iv) a church;

40 (v) a public library;

41 (vi) a public playground;

42 (vii) a public park;

43 (viii) a youth center or other space used primarily for youth oriented activities;

44 (ix) a public recreational facility;

45 (x) a public arcade; or

46 (xi) for a new license issued on or after July 1, 2018, a homeless shelter.

47 (b) "Department" means the Department of Health, created in Section [26-1-4](#).

48 (c) "Electronic cigarette product" means the same as that term is defined in Section

49 [76-10-101](#).

50 (d) "Flavored electronic cigarette product" means the same as that term is defined in

51 Section [76-10-101](#).

52 (e) "Licensee" means a person licensed under this section to conduct business as a retail  
53 tobacco specialty business.

54 (f) "Local health department" means the same as that term is defined in Section

55 [26A-1-102](#).

56 (g) "Nicotine product" means the same as that term is defined in Section [76-10-101](#).

57 (h) "Retail tobacco specialty business" means a commercial establishment in which:

58 (i) sales of tobacco products, electronic cigarette products, and nicotine products account  
59 for more than 35% of the total quarterly gross receipts for the establishment;

60 (ii) 20% or more of the public retail floor space is allocated to the offer, display, or  
61 storage of tobacco products, electronic cigarette products, or nicotine products;

62 (iii) 20% or more of the total shelf space is allocated to the offer, display, or storage of  
63 tobacco products, electronic cigarette products, or nicotine products;

64 (iv) the commercial establishment:

65 (A) holds itself out as a retail tobacco specialty business; and

66 (B) causes a reasonable person to believe the commercial establishment is a retail  
67 tobacco specialty business;

68 (v) any flavored electronic cigarette product is sold; or

69 (vi) the retail space features a self-service display for tobacco products, electronic  
70 cigarette products, or nicotine products.

71 (i) "Self-service display" means the same as that term is defined in Section [76-10-105.1](#).

72 (j) "Tobacco product" means:

73 (i) a tobacco product as defined in Section [76-10-101](#); or

74 (ii) tobacco paraphernalia as defined in Section [76-10-101](#).

75 (2) The regulation of a retail tobacco specialty business is an exercise of the police  
76 powers of the state by the state or by delegation of the state's police powers to other  
77 governmental entities.

78 (3) (a) A person may not operate a retail tobacco specialty business in a municipality  
79 unless the person obtains a license from the municipality in which the retail tobacco specialty  
80 business is located.

81 (b) A municipality may only issue a retail tobacco specialty business license to a person if  
82 the person complies with the provisions of Subsections (4) and (5).

83 (4) (a) Except as provided in Subsection (7), a municipality may not issue a license for a  
84 person to conduct business as a retail tobacco specialty business if the retail tobacco specialty  
85 business is located within:

86 (i) 1,000 feet of a community location;

87 (ii) 600 feet of another retail tobacco specialty business; or

88 (iii) 600 feet from property used or zoned for:

89 (A) agriculture use; or

90 (B) residential use.

91 (b) For purposes of Subsection (4)(a), the proximity requirements shall be measured in a  
92 straight line from the nearest entrance of the retail tobacco specialty business to the nearest  
93 property boundary of a location described in Subsections (4)(a)(i) through (iii), without regard to  
94 intervening structures or zoning districts.

95 (5) A municipality may not issue or renew a license for a person to conduct business as a  
96 retail tobacco specialty business until the person provides the municipality with proof that the retail  
97 tobacco specialty business has:

98 (a) a valid permit for a retail tobacco specialty business issued under Title 26, Chapter 62,  
99 Tobacco, Electronic Cigarette, and Nicotine Product Retail Permit, by the local health department  
100 having jurisdiction over the area in which the retail tobacco specialty business is located; and

101 (b) (i) for a retailer that sells a tobacco product, a valid license issued by the State Tax  
102 Commission in accordance with Section 59-14-201 or 59-14-301 to sell a tobacco product; and

103 (ii) for a retailer that sells an electronic cigarette product or a nicotine product, a valid  
104 license issued by the State Tax Commission in accordance with Section 59-14-803 to sell an  
105 electronic cigarette product or a nicotine product.

106 (6) (a) Nothing in this section:

107 (i) requires a municipality to issue a retail tobacco specialty business license; or

108 (ii) prohibits a municipality from adopting more restrictive requirements on a person  
109 seeking a license or renewal of a license to conduct business as a retail tobacco specialty  
110 business.

111 (b) A municipality may suspend or revoke a retail tobacco specialty business license  
112 issued under this section:

113 (i) if a licensee engages in a pattern of unlawful activity under Title 76, Chapter 10, Part  
114 16, Pattern of Unlawful Activity Act;

115 (ii) if a licensee violates federal law or federal regulations restricting the sale and  
116 distribution of tobacco products or electronic cigarette products to protect children and  
117 adolescents;

118 (iii) upon the recommendation of the department or a local health department under Title  
119 26, Chapter 62, Tobacco, Electronic Cigarette, and Nicotine Product Retail Permit; or

120 (iv) under any other provision of state law or local ordinance.

121 (7) (a) ~~[Except as provided in Subsection (8), a]~~ A retail tobacco specialty business [that  
122 has a] is exempt from Subsection (4) if:

123 (i) on or before December 31, 2018, the retail tobacco specialty business was issued a  
124 license [and] to conduct business as a retail tobacco specialty business;

125 (ii) the retail tobacco specialty business is operating in a municipality in accordance with  
126 all applicable laws except for the requirement in Subsection (4)[, on or before December 31, 2018,  
127 is exempt from Subsection (4).]; and

128 (iii) beginning July 1, 2021, the retail tobacco specialty business is not located within 1,000  
129 feet of a public or private kindergarten, elementary, middle, junior high, or high school.

130 (b) A retail tobacco specialty business may maintain an exemption under Subsection  
131 (7)(a) if:

132 (i) the ~~[retail tobacco specialty business]~~ license described in Subsection (7)(a)(i) is  
133 renewed continuously without lapse or permanent revocation;

134 (ii) the retail tobacco specialty business does not close for business or otherwise suspend  
135 the sale of tobacco products, electronic cigarette products, or nicotine products for more than 60  
136 consecutive days;

137 (iii) the retail tobacco specialty business does not substantially change the business  
138 premises or business operation; and

139 (iv) the retail tobacco specialty business maintains the right to operate under the terms of  
140 other applicable laws, including:

141 (A) Title 26, Chapter 38, Utah Indoor Clean Air Act;

142 (B) zoning ordinances;

143 (C) building codes; and

144 ~~[(D) the requirements of a retail tobacco specialty business license issued before~~  
145 ~~December 31, 2018.]~~

146 ~~[(8) Beginning August 15, 2020, a retail tobacco specialty business that has a business~~  
147 ~~license and is operating in a municipality may not be located within 1,000 feet of any school.]~~

148 (D) the requirements of the license described in Subsection (7)(a)(i).

149 (c) A retail tobacco specialty business that does not qualify for an exemption under  
150 Subsection (7)(a) is exempt from Subsection (4) if:

151 (i) on or before December 31, 2018, the retail tobacco specialty business was issued a  
152 general tobacco retailer permit or a retail tobacco specialty business permit under Title 26,  
153 Chapter 62, Tobacco, Electronic Cigarette, and Nicotine Product Retail Permit, by the local health  
154 department having jurisdiction over the area in which the retail tobacco specialty business is  
155 located;

156 (ii) the retail tobacco specialty business is operating in the municipality in accordance with  
157 all applicable laws except for the requirement in Subsection (4); and

158 (iii) beginning July 1, 2022, the retail tobacco specialty business is not located within 1,000  
159 feet of a public or private kindergarten, elementary, middle, junior high, or high school.

160 (d) A retail tobacco specialty business may maintain an exemption under Subsection  
161 (7)(c) if:

162 (i) on or before December 31, 2020, the retail tobacco specialty business receives a retail  
163 tobacco specialty business permit from the local health department having jurisdiction over the  
164 area in which the retail tobacco specialty business is located;

165 (ii) the permit described in Subsection (7)(d)(i) is renewed continuously without lapse or  
166 permanent revocation;

167 (iii) the retail tobacco specialty business does not close for business or otherwise suspend  
168 the sale of tobacco products, electronic cigarette products, or nicotine products for more than 60  
169 consecutive days; and

170 (iv) the retail tobacco specialty business maintains the right to operate under the terms of  
171 other applicable laws, including:

172 (A) Title 26, Chapter 38, Utah Indoor Clean Air Act;

173 (B) zoning ordinances;

174 (C) building codes; and

175 (D) the requirements of the retail tobacco permit described in Subsection (7)(d)(i).

176 Section 2. Section **17-50-333** is amended to read:

177 **17-50-333. Regulation of retail tobacco specialty business.**

178 (1) As used in this section:

179 (a) "Community location" means:

180 (i) a public or private kindergarten, elementary, middle, junior high, or high school;

181 (ii) a licensed child-care facility or preschool;

- 182 (iii) a trade or technical school;
- 183 (iv) a church;
- 184 (v) a public library;
- 185 (vi) a public playground;
- 186 (vii) a public park;
- 187 (viii) a youth center or other space used primarily for youth oriented activities;
- 188 (ix) a public recreational facility;
- 189 (x) a public arcade; or
- 190 (xi) for a new license issued on or after July 1, 2018, a homeless shelter.
- 191 (b) "Department" means the Department of Health, created in Section 26-1-4.
- 192 (c) "Electronic cigarette product" means the same as that term is defined in Section
- 193 76-10-101.
- 194 (d) "Flavored electronic cigarette product" means the same as that term is defined in
- 195 Section 76-10-101.
- 196 (e) "Licensee" means a person licensed under this section to conduct business as a retail
- 197 tobacco specialty business.
- 198 (f) "Local health department" means the same as that term is defined in Section
- 199 26A-1-102.
- 200 (g) "Nicotine product" means the same as that term is defined in Section 76-10-101.
- 201 (h) "Retail tobacco specialty business" means a commercial establishment in which:
- 202 (i) sales of tobacco products, electronic cigarette products, and nicotine products account
- 203 for more than 35% of the total quarterly gross receipts for the establishment;
- 204 (ii) 20% or more of the public retail floor space is allocated to the offer, display, or
- 205 storage of tobacco products, electronic cigarette products, or nicotine products;
- 206 (iii) 20% or more of the total shelf space is allocated to the offer, display, or storage of
- 207 tobacco products, electronic cigarette products, or nicotine products;
- 208 (iv) the commercial establishment:
- 209 (A) holds itself out as a retail tobacco specialty business; and
- 210 (B) causes a reasonable person to believe the commercial establishment is a retail
- 211 tobacco specialty business;
- 212 (v) any flavored electronic cigarette product is sold; or

213 (vi) the retail space features a self-service display for tobacco products, electronic  
214 cigarette products, or nicotine products.

215 (i) "Self-service display" means the same as that term is defined in Section 76-10-105.1.

216 (j) "Tobacco product" means:

217 (i) the same as that term is defined in Section 76-10-101; or

218 (ii) tobacco paraphernalia as defined in Section 76-10-101.

219 (2) The regulation of a retail tobacco specialty business is an exercise of the police  
220 powers of the state by the state or by the delegation of the state's police power to other  
221 governmental entities.

222 (3) (a) A person may not operate a retail tobacco specialty business in a county unless  
223 the person obtains a license from the county in which the retail tobacco specialty business is  
224 located.

225 (b) A county may only issue a retail tobacco specialty business license to a person if the  
226 person complies with the provisions of Subsections (4) and (5).

227 (4) (a) Except as provided in Subsection (7), a county may not issue a license for a  
228 person to conduct business as a retail tobacco specialty business if the retail tobacco specialty  
229 business is located within:

230 (i) 1,000 feet of a community location;

231 (ii) 600 feet of another retail tobacco specialty business; or

232 (iii) 600 feet from property used or zoned for:

233 (A) agriculture use; or

234 (B) residential use.

235 (b) For purposes of Subsection (4)(a), the proximity requirements shall be measured in a  
236 straight line from the nearest entrance of the retail tobacco specialty business to the nearest  
237 property boundary of a location described in Subsections (4)(a)(i) through (iii), without regard to  
238 intervening structures or zoning districts.

239 (5) A county may not issue or renew a license for a person to conduct business as a retail  
240 tobacco specialty business until the person provides the county with proof that the retail tobacco  
241 specialty business has:

242 (a) a valid permit for a retail tobacco specialty business issued under Title 26, Chapter 62,  
243 Tobacco, Electronic Cigarette, and Nicotine Product Retail Permit, by the local health department

244 having jurisdiction over the area in which the retail tobacco specialty business is located; and

245 (b) (i) for a retailer that sells a tobacco product, a valid license issued by the State Tax  
246 Commission in accordance with Section 59-14-201 or 59-14-301 to sell a tobacco product; or

247 (ii) for a retailer that sells an electronic cigarette product or a nicotine product, a valid  
248 license issued by the State Tax Commission in accordance with Section 59-14-803 to sell an  
249 electronic cigarette product or a nicotine product.

250 (6) (a) Nothing in this section:

251 (i) requires a county to issue a retail tobacco specialty business license; or

252 (ii) prohibits a county from adopting more restrictive requirements on a person seeking a  
253 license or renewal of a license to conduct business as a retail tobacco specialty business.

254 (b) A county may suspend or revoke a retail tobacco specialty business license issued  
255 under this section:

256 (i) if a licensee engages in a pattern of unlawful activity under Title 76, Chapter 10, Part  
257 16, Pattern of Unlawful Activity Act;

258 (ii) if a licensee violates federal law or federal regulations restricting the sale and  
259 distribution of tobacco products or electronic cigarette products to protect children and  
260 adolescents;

261 (iii) upon the recommendation of the department or a local health department under Title  
262 26, Chapter 62, Tobacco, Electronic Cigarette, and Nicotine Product Retail Permit; or

263 (iv) under any other provision of state law or local ordinance.

264 (7) (a) [~~Except as provided in Subsection (8), a~~] A retail tobacco specialty business [~~that~~  
265 ~~has a~~] is exempt from Subsection (4) if:

266 (i) on or before December 31, 2018, the retail tobacco specialty business was issued a  
267 license [and] to conduct business as a retail tobacco specialty business;

268 (ii) the retail tobacco specialty business is operating in a county in accordance with all  
269 applicable laws except for the requirement in Subsection (4)[, on or before December 31, 2018, is  
270 exempt from Subsection (4).]; and

271 (iii) beginning July 1, 2021, the retail tobacco specialty business is not located within 1,000  
272 feet of a public or private kindergarten, elementary, middle, junior high, or high school.

273 (b) A retail tobacco specialty business may maintain an exemption under Subsection  
274 (7)(a) if:

275 (i) the ~~[retail tobacco specialty business]~~ license described in Subsection (7)(a)(i) is  
276 renewed continuously without lapse or permanent revocation;

277 (ii) the retail tobacco specialty business does not close for business or otherwise suspend  
278 the sale of tobacco products, electronic cigarette products, or nicotine products for more than 60  
279 consecutive days;

280 (iii) the retail tobacco specialty business does not substantially change the business  
281 premises or business operation; and

282 (iv) the retail tobacco specialty business maintains the right to operate under the terms of  
283 other applicable laws, including:

284 (A) Title 26, Chapter 38, Utah Indoor Clean Air Act;

285 (B) zoning ordinances;

286 (C) building codes; and

287 ~~[(D) the requirements of a retail tobacco specialty business license issued before  
288 December 31, 2018:]~~

289 ~~[(8) Beginning August 15, 2020, a retail tobacco specialty business that has a business  
290 license and is operating in a county may not be located within 1,000 feet of any school.]~~

291 (D) the requirements of the license described in Subsection (7)(a)(i).

292 (c) A retail tobacco specialty business that does not qualify for an exemption under  
293 Subsection (7)(a) is exempt from Subsection (4) if:

294 (i) on or before December 31, 2018, the retail tobacco specialty business was issued a  
295 general tobacco retailer permit or a retail tobacco specialty business permit under Title 26,  
296 Chapter 62, Tobacco, Electronic Cigarette, and Nicotine Product Retail Permit, by the local health  
297 department having jurisdiction over the area in which the retail tobacco specialty business is  
298 located;

299 (ii) the retail tobacco specialty business is operating in the county in accordance with all  
300 applicable laws except for the requirement in Subsection (4); and

301 (iii) beginning July 1, 2022, the retail tobacco specialty business is not located within 1,000  
302 feet of a public or private kindergarten, elementary, middle, junior high, or high school.

303 (d) A retail tobacco specialty business may maintain an exemption under Subsection  
304 (7)(c) if:

305 (i) on or before December 31, 2020, the retail tobacco specialty business receives a retail

306 tobacco specialty business permit from the local health department having jurisdiction over the  
307 area in which the retail tobacco specialty business is located;

308 (ii) the permit described in Subsection (7)(d)(i) is renewed continuously without lapse or  
309 permanent revocation;

310 (iii) the retail tobacco specialty business does not close for business or otherwise suspend  
311 the sale of tobacco products, electronic cigarette products, or nicotine products for more than 60  
312 consecutive days; and

313 (iv) the retail tobacco specialty business maintains the right to operate under the terms of  
314 other applicable laws, including:

315 (A) Title 26, Chapter 38, Utah Indoor Clean Air Act;

316 (B) zoning ordinances;

317 (C) building codes; and

318 (D) the requirements of the retail tobacco permit described in Subsection (7)(d)(i).

319 Section 3. Section **26-62-202** is amended to read:

320 **26-62-202. Permit application.**

321 (1) A local health department shall issue a permit under this chapter for a tobacco retailer  
322 if the local health department determines that the applicant:

323 (a) accurately provided all information required under Subsection (3) and, if applicable,  
324 Subsection (4); and

325 (b) meets all requirements for a permit under this chapter.

326 (2) An applicant for a permit shall:

327 (a) submit an application described in Subsection (3) to the local health department with  
328 jurisdiction over the area where the tobacco retailer is located; and

329 (b) pay all applicable fees described in Section [26-62-203](#).

330 (3) The application for a permit shall include:

331 (a) the name, address, and telephone number of each proprietor;

332 (b) the name and mailing address of each proprietor authorized to receive permit-related  
333 communication and notices;

334 (c) the business name, address, and telephone number of the single, fixed location for  
335 which a permit is sought;

336 (d) evidence that the location for which a permit is sought has a valid tax commission

337 license;

338 (e) information regarding whether, in the past 24 months, any proprietor of the tobacco  
339 retailer has been determined to have violated, or has been a proprietor at a location that has been  
340 determined to have violated:

341 (i) a provision of this chapter;

342 (ii) Chapter 38, Utah Indoor Clean Air Act;

343 (iii) Title 76, Chapter 10, Part 1, Cigarettes and Tobacco and Psychotoxic Chemical  
344 Solvents;

345 (iv) Title 76, Chapter 10, Part 16, Pattern of Unlawful Activity Act;

346 (v) regulations restricting the sale and distribution of cigarettes and smokeless tobacco  
347 issued by the United States Food and Drug Administration, 21 C.F.R. Part 1140; or

348 (vi) any other provision of state law or local ordinance regarding the sale, marketing, or  
349 distribution of a tobacco product, an electronic cigarette product, or a nicotine product; and

350 (f) the dates of all violations disclosed under this Subsection (3).

351 (4) (a) In addition to the information described in Subsection (3), an applicant for a retail  
352 tobacco specialty business permit shall include evidence showing whether the business is located  
353 within:

354 (i) 1,000 feet of a community location;

355 (ii) 600 feet of another retail tobacco specialty business; or

356 (iii) 600 feet of property used or zoned for agricultural or residential use.

357 (b) For purposes of Subsection (4)(a), the proximity requirements shall be measured in a  
358 straight line from the nearest entrance of the retail tobacco specialty business to the nearest  
359 property boundary of a location described in Subsections (4)(a)(i) through (iii), without regard to  
360 intervening structures or zoning districts.

361 (5) The department or a local health department may not deny a permit to a retail tobacco  
362 specialty business under Subsection (4) if the retail tobacco specialty business [~~obtained a license~~  
363 ~~to operate the retail tobacco specialty business before December 31, 2015, from:~~] meets the  
364 requirements described in Subsection [10-8-41.6\(7\)](#) or [17-50-333\(7\)](#).

365 [~~(a) a municipality under Section [10-8-41.6](#); or~~]

366 [~~(b) a county under Section [17-50-333](#);~~]

367 (6) (a) The department shall establish by rule made in accordance with Title 63G,

368 Chapter 3, Utah Administrative Rulemaking Act, a permit process for local health departments in  
369 accordance with this chapter.

370 (b) The permit process established by the department under Subsection (6)(a) may not  
371 require any information in an application that is not required by this section.

372 Section 4. Section **63I-1-210** is amended to read:

373 **63I-1-210. Repeal dates, Title 10.**

374 [~~(1) Subsection 10-8-41.6(7), the language that states "December 31, 2018" is repealed~~  
375 ~~July 1, 2022, and replaced with "December 31, 2015".]~~

376 [~~(2)~~] Section **10-9a-526** is repealed December 31, 2020.

377 Section 5. Section **63I-1-217** is amended to read:

378 **63I-1-217. Repeal dates, Title 17.**

379 (1) Subsection **17-16-21(2)(d)** is repealed July 1, 2023.

380 (2) Title 17, Chapter 21a, Part 3, Administration and Standards, which creates the Utah  
381 Electronic Recording Commission, is repealed July 1, 2022.

382 [~~(3) Subsection 17-50-333(7), the language that states "December 31, 2018" is repealed~~  
383 ~~July 1, 2022, and replaced with "December 31, 2015".]~~

384 Section 6. **Effective date -- Retrospective operation.**

385 (1) If approved by two-thirds of all the members elected to each house, this bill takes  
386 effect upon approval by the governor, or the day following the constitutional time limit of Utah  
387 Constitution, Article VII, Section 8, without the governor's signature, or in the case of a veto, the  
388 date of veto override.

389 (2) This bill has retrospective operation to August 15, 2020.